

**Probate Conservatorship Task Force  
Business Meeting**

**San Francisco, California  
June 23, 2006**

**Minutes**

**Task Force Members Present:** Hon. Roger W. Boren (*Chair*), Hon. Aviva K. Bobb, Ms. Judith Chinello, Ms. Michelle Williams Court, Hon. Don Edward Green, Hon. Donna J. Hitchens, Hon. Steven E. Jahr, Hon. Laurence Donald Kay (Ret.), Ms. Gina L. Klee, Hon. William H. Kronberger, Dr. Margaret Little, Hon. Sandra Lynn Margulies, Ms. Patricia L. McGinnis, Hon. Barbara J. Miller, Mr. Richard L. Narver, Ms. Jacquie Paige, Ms. Sandy Sanfilippo, Mr. Alan Slater, Ms. Pat Sweeten, and Mr. Alfredo Terrazas

**Task Force Members Not Present:** Hon. S. William Abel, Hon. Frederick Paul Horn, Ms. Margaret Lodise, and Ms. Gloria Ochoa

**Task Force Staff:** Chris Patton, (*Lead*), Rod Cathcart, Douglas C. Miller, Dan Pone, Evyn Shomer, Susan Reeves, and Jennifer Turnure

**Item 1            Welcome and Introduction of Members**

Justice Roger Boren, Chair, called the meeting to order and welcomed task force members. Introductions were made, the agenda for the day was reviewed, and the minutes from the May 24 meeting were approved.

**Item 2            Public Comments**

There were no attendees from the public.

**Item 3            Presentation by Arizona Supreme Court, Administrative Office of the Courts**

Justice Boren introduced guest speakers from Arizona, Mr. David K. Byers, Administrative Director of the Courts, and Ms. Nancy Swetnam, Director, Certification and Licensing Division.

Ms. Swetnam opened the presentation with a definition of the term "fiduciary". In Arizona, a fiduciary can mean either a conservator (someone who is appointed to care for another person's finances) or a guardian (someone who is appointed to care for another person's well being). These terms apply to both adults and children in Arizona, where in California a guardian would be appointed to care for a person under 18 years old, and a conservator would be appointed for someone over 18 years. An Arizona fiduciary can also be a personal representative (someone who is appointed to deal with an estate after death). Fiduciaries are court appointed, can be both public and private, are not related to their wards, and are paid a fee. In Arizona, the term

fiduciary does not apply to banks and trusts, and also does not apply where there are mental health issues.

Arizona first began investigating their fiduciary program in 1992 due to a high profile abuse case in Maricopa County, and introduced the first legislation in 1994. They initially chose to write general statutes rather than specifics so as to avoid the necessity for frequent changes and updates. Their main concern was to make certain the judicial branch had regulatory authority over fiduciaries. The program was designed so the Arizona Supreme Court would administer the program, would have authority to receive and process fingerprints, and would be able to impose fines and fees. The court would require bonds to cover the assets of an estate in case funds are found missing, and also would require a \$10,000 bond per fiduciary to cover investigation costs and costs of any disciplinary or prosecutorial action that might be necessary.

In order to provide the Arizona Supreme Court, Administrative Office of the Courts (Arizona AOC) the power to regulate the new fiduciary program, it would directly certify the following entities:

- Conservators, guardians and personal representatives
- All public and all private individuals, including their primary staff
- Banks and trust companies (now exempted)

Certification would allow for education programs, experience requirements, examinations, and removal of right to practice. The state decided certification would offer the appropriate level of control on the program -- registration provided too little control, licensure was too restrictive. Also, it was decided that family members, powers of attorney, or trustees would not need to be certified.

In the first years of the program, they had inadequate funding and were able to offer only limited training for fiduciaries. By 1997 a small funding source was identified outside the state's general fund that enabled examination development and additional training for fiduciaries. Full certification of fiduciaries was implemented in 1999.

The Arizona AOC faced many challenges from all entities, including their own courts. Fiduciaries varied in level of experience and skills, and were resistant to regulation of any kind. The state did not know how many fiduciaries there were (currently 350 certified fiduciaries), and there were no models for certification; rules, policies and procedures; staffing levels; and handling of complaints. The initial system brought to light many cases of impropriety as there was now a vehicle for reporting.

A Fiduciary Advisory Committee was appointed in March 2000, and it issued a report to the Arizona Judicial Council by June of 2001. The report provided recommendations on program administration, training, information and technology, standardization, court-appointed counsel, audits, statutory amendments, a statewide fiduciary office, and a standing commission.

Program Administration: Fiduciaries are appointed by judges. In order to be certified, a fiduciary must be a high school graduate with three years work experience, or be a college graduate with one-year work experience. There was no grandfather clause for certification.

Education and Training: Annual education requirements for fiduciaries include twenty hours of training plus three hours of ethics courses. Training is done by the Arizona Fiduciary Association, and is the same for both conservators and guardians. The certification exam was written by the Arizona AOC staff, along with judges, and was validated by professional test validator. Judges also now receive related training in their roles and responsibilities, case oversight, and competency, as part of their new judge orientation.

Arizona uses a statewide case management system that allows courts to pull reports on conservatorship cases, however, there is still inaccurate and missing data. There is no standardization of policies, procedures, and forms between counties, which presents a challenge for fiduciaries that serve in multiple areas. Random compliance audits of all Arizona fiduciaries are performed, and there are now fiduciary arrest warrants, similar to criminal bench warrants, which may be served.

Currently, the Arizona AOC has a regulatory division consisting of seven professionals and 30 staff. It is organized by function:

- Compliance/Certification (Specialist) and Audits (Manager and Specialist)
- Investigation (3 Investigators and Paralegal)
- Hearings (Manager and Administrative Assistant)

To date, the certification specialist has processed 1600 applications; the audit unit has completed 11 audits; and the investigators have reviewed 189 complaints, 36% of them resulting in discipline. The funding to support this unit comes from a variety of sources: \$250 certification fees; surcharge on adoptions, birth certificates, traffic tickets and fines; and some grant funding.

As of June 2006, the Arizona Judicial Council adopted amendments to the Administrative Rules which will bring statewide probate rules, new laws for seniors, a free Elder Hotline where seniors can speak to a lawyer on the phone, a fiduciary board, provisions for additional audits, and training for judicial officers and staff.

Some key lessons learned from the more than decade long revision of the Arizona probate system:

- Need support of the top judicial leadership as well as executive branch, state bar, AARP, and fiduciary organizations;
- Secure adequate funding;
- Establish the correct level of regulation needed in the start (registration, certification or licensing);
- Establish professional qualifications;
- Separate regulation and training - one agency should not do both;
- Use all oversight and enforcement tools available, i.e., credit checks, fingerprints, audits, arrest warrants;
- Educate judges, court staff, fiduciaries, and county staff;

- Standardize procedures throughout the state; and
- Use automated tools and reports - especially helpful if have statewide case management system.

#### **Item 4            Legislative Update**

Mr. Dan Pone provided a brief status report on the four bills currently pending in the Legislature that would impact probate conservatorship, including the development of the bundling of the Assembly bill [AB 1363 (Jones) – Omnibus Conservatorship and Guardianship Reform Act of 2006] with the three Senate bills [SB 1116 (Scott) – Conservatorships, SB 1550 (Figueroa) – Professional Fiduciaries Act, and SB 1716 (Bowen) – Conservatorships]. Also, none of these bills have appropriations attached and money was not included in the recently enacted Fiscal Year 2006-2007 budget to cover their costs.

Mr. William C. Vickrey, Administrative Director of the Courts, joined the discussion and spoke to the lack of appropriations attached to the above bills. He expressed his hopes that funding can be obtained through the budget change proposal (BCP) process.

#### **Item 5            Working Group Meetings**

Each of the working groups met separately to develop their work plans and begin deliberations in their respective areas.

#### **Item 6            Reports of Working Groups**

Reports were made by the leads from each of the three working groups:

- a. Model Programs and Best Practices – Judge William Kronberger reported the best practices working group met with Ms. Judith Green, Supervising Court Investigator of the Superior Court of Alameda County. They reviewed that court's use of the General Plan (discussed in May 24 Minutes), and indicated they intend to meet with representatives from the Superior Court of Orange County to review their plan when in Southern California for next month's meeting.
- b. Education and Training - Justice Roger Boren reported the education working group is developing bullet points for the task force's interim report to the Judicial Council, noting that many of the working group's recommendations will be contingent on pending legislation. Also, they are investigating education requirements for conservators, Cal State Fullerton's course, use of distance learning tools, and are following up on the Benchguide on Probate for judicial officers currently in development.

Rules and Laws – Mr. Alan Slater reported that the working group is focusing their initial efforts on the roles/functions of court investigators. Mr. Douglas C. Miller is drafting proposed statewide uniform rules on temporary conservatorships.

**Item 7            Other Business**

With no further business, the meeting was adjourned at 3:00 p.m.

*Approved by the Probate Conservatorship Task Force on August 4, 2006*